sion). But in the leading case of *Hanley* v. *Kansas City So. R. Co.*, 187 U. S. 617, the supposed doctrine of the *Lehigh Valley* decision was whittled down and held to be inapplicable to the fixing of railroad rates. The Virginia court, however, reaffirmed its previous holding (two judges dissenting) in *Telegraph Co.* v. *Hughes*, 104 Va. 240, decided after the *Hanley Case*. Thereafter, in 1910, Congress amended the Interstate Commerce Act of 1887 so as to place telegraph companies, with respect to interstate business, on the same footing with other common carriers. This resulted in some of the state tribunals righting themselves. *Telegraph Co.* v. *Bolling*, 120 Va. 413. Others, however, stood their ground. *Telegraph Co.* v. *Sharp*, 121 Ark. 135. In accord with the principal case is *Telegraph Co.* v. *Bowles*, (Va., 1919), 98 S. E. 645. See also *Telegraph Co.* v. *Lee*, 174 Ky. 210, Ann. Cas. 1918-C, 1026 and 1036, notes. In *Watson* v. *Telegraph Co.*, (N. C., 1919) 101 S. E. 81, it was held that a message like that in the case at bar was not interstate, where the mode of transmission was not the usual and customary one, but was adopted in order to evade state laws. While this may be a desirable result from the public's point of view as well as a curb on fraud, as a matter of logic it is difficult to see how an intangible mental state can change the nature of a cold fact. See the reasoning on this point in *Telegraph Co.* v. *Mahone*, 120 Va. 423. On the whole topic, see the notes in 28 L. R. A. (N.S.) 985 and in L. R. A. 1918-A 805.

TRESPASS—ASSAULT AND BATTERY—VIOLATION OF SUNDAY LAW—ABSOLUTE LIABILITY.—Plaintiff and defendant were hunting on Sunday in violation of the law. Defendant accidentally shot the plaintiff. *Held*: Defendant is liable in trespass, even in the absence of negligence. *White* v. *Levarn*, (Vt., 1920) 108 Atl. 564.

The fact that plaintiff was violating the Sunday law should not preclude recovery in an action on the case for negligence because the violation of the law was not the proximate cause of the injury. *Eagan* v. *Maguire*, 21 R. I. 189; *Taylor* v. *Star Coal Co.*, 110 Ia. 40; *Sutton* v. *Wauwatosa*, 29 Wis. 21. The breach of the law was a mere condition under which the accident happened, not the cause, *Dervin* v. *Frenier*, 91 Vt. 398. It was a mere violation of the plaintiff's collateral duty to the state. *City of Kansas City* v. *Orr*, 62 Kans. 61. See also *Cobb* v. *Cumberland County Power Co.*, 117 Me. 455. But some courts have held that where plaintiff was violating the law, he could not recover for injuries due to defendant's negligence. *Cratty* v. *City of Bangor*, 57 Me. 423; *Lyons* v. *Desotelle*, 124 Mass. 387; 6 CENTRAL LAW JOURNAL 402; 21 Id. 525; *Beachem* v. *Portsmouth Bridge*, 68 N. H. 382. This has been changed by statute in Maine and Massachusetts. Where both plaintiff and defendant were violating the Sunday law, it was held that their relative rights were not affected, and that plaintiff could recover in an action on the case, if defendant were negligent. *Gross* v. *Miller*, 93 Ia. 72; *Atlantic Steel Co.* v. *Hughes*, 136 Ga. 511. See COOLEY ON TORTS, [3rd edit.] p 273. All of the above cases were actions on the case where negligence is the gist of the action, but where plaintiff sues in trespass, as in the principal case, differ-

ent considerations may arise. The weight of authority holds that one who, while engaged in a *lawful* act, accidentally injures the person of another is not liable in trespass unless he was negligent. *Morris* v. *Platt,* 32 Conn. 75; *Vincent* v. *Stinehour,* 7 Vt. 69; *Brown* v. *Kendall,* 6 Cush. (Mass.) 292. Contra: *Sullivan* v. *Dunham,* 161 N. Y. 290; 3 N. Y. Ann. Cas. 324, 328; *Rafferty* v. *Davis,* (1918) 260 Pa. 563. After considerable controversy, the law of England was settled in accord with the weight of authority in this country. *Stanley* v. *Powell,* (1891) 1 Q. B. 86; 5 HARV. L. REV. 36. Where the defendant's act was *unlawful,* it is held that he is liable in trespass for injuries inflicted directly by forces set in motion by him, although he had no intent to do the specific act which caused the injury, and even in the absence of negligence, *Williams* v. *Townsend,* 15 Kans. 563; *Murphy* v. *Wilson,* 44 Mo. 313; even though plaintiff acquiesced in defendant's violation of the law, *Evans* v. *Waite,* 83 Wis. 286; and even where it seemed probable that the plaintiff's own act was the proximate cause of his injury, *Horton* v. *Wylie,* 115 Wis. 505. It has been noted above that where both plaintiff and defendant were engaged in an unlawful act, the plaintiff's right to recover in an action on the case is usually held to be the same as if neither had been unlawfully engaged. The right to recover in trespass in such a case has been denied in *Gilmore* v. *Fuiler,* 198 Ill. 130; *Vernon* v. *Bankston,* 28 La. Ann. 710; *Aldrich* v. *Harvey,* 50 Vt. 162. But a recovery has been allowed, as in the principal case, even where the plaintiff invited the defendant to enter into the unlawful engagement, on the theory that consent to an assault and battery is of no effect. *Stout* v. *Wren,* 8 N. C. 420; *Shay* v. *Thompson,* 59 Wis. 540; *Morris* v. *Miller,* 83 Nebr. 218. *Contra*: *Galbraith* v. *Fleming,* 60 Mich. 403. But this theory is not adhered to in cases holding that a woman can not recover damages for her own seduction if she consented, regardless of the unlawfulness of fornication. *Paul* v. *Frazier,* 3 Mass. 71; *Welsund* v. *Schueller,* 98 Minn. 475. While it would seem at first blush contrary to certain general principles of remedial justice to allow a plaintiff to recover where he and the defendant were in equal fault (and thus was the law stated by Lord Mansfield in *Holman* v. *Johnson,* (1775) Cowp. 341) today the majority of courts allow a recovery. The apparent anomaly rests on the importance which the law attaches to the safety of life and person.

VENDOR AND PURCHASER—MORTGAGES—NO CONSTRUCTIVE NOTICE OF RECITALS OF UNRECORDED DEED.—D held a real property mortgage which was not recorded. Later, P took a mortgage on same land from the grantee of D's mortgagor. In said grantee's deed (which was not recorded) was a recital of the mortgage to D. P sued to foreclose. D claims a priority. *Held*: The recitals in the deed gave P no constructive notice, because it was not recorded. *Ebling Brewing Co.* v. *Gennaro et al,* (1919) 179 N. Y. Supp. 384.

In *Baker* v. *Mather,* 25 Mich. 51, it was held that a mortgagee took subject to a prior unrecorded mortgage which was expressly referred to in the deed to the mortgagor of the subsequent mortgage. The principal case held